IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.N.BASHA

CRL.O.P.No.28438 of 2006
&
M.P.NO.1 of 2006

S.N.Venkatakrishnan ... Petitioner/Accused-2

Vs.

1. State through the
   Inspector of Police,
   Central Crime Branch,
   Team-III, Egmore,
   Chennai - 600 008.
   (Crime No.690/2006) ... Respondent/Complainant

2. Mr.T.N.S.Jayaraj,
   S/o. T.N.Swamidoss,
   Proprietor,
   Sri Krishna Service Station,
   122, Arcot Road, Kodambakkam,
   Chennai - 600 024. ... Respondent

3. Mr.Gopal @ Gopalakrishnan,
   S/o.C.Arumugam, Kurinji Street,
   Poonni Nagar, Karambakkam,
   Chennai - 600 024. ... Respondent/Accused-1

* * *

Prayer : Criminal Original Petition filed under Section 482 of the Code Criminal Procedure, praying to call for the records and quash the FIR in respect of the Petitioner-A2 and further investigation against the petitioner-A2 in connection with the above case in the 'X'Crime No.690/2006 on the file of the Inspector of Police, Central Crime Branch, Team-III, Egmore, Chennai.

For Petitioner : Mr.R.Shanmugasundaram, Senior Counsel
for M/s.K.M.Sukadev

For R-1 : Mr.P.Kumaresan
Additional Public Prosecutor

For R-2 : Mr.V.Balu

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O R D E R

Mr.R.Shanmugasundram, learned senior counsel appearing for the petitioner submitted that the petitioner who has been arrayed as A2 in this case has came forward with this petition seeking the relief of quashing the FIR registered implicating the petitioner as well as another accused namely A1 for the alleged offence under section 408, 420, 465, 468, 471, r/w 468 and 34 and 109 of IPC.

2. The learned senior counsel appearing for the petitioner contended that the petitioner being the Branch Manager of the bank, viz., Bank of India, Kodambakkam Branch, Chennai, has absolutely nothing to do with the alleged offence in the complaint. It is contended by the learned senior counsel for the petitioner that as a matter of fact the credit, loan and Overdraft facilities availed only by the petrol bunk owned by second respondent as the proprietor of the said petrol bunk. That being the position, the petrol bunk has absolutely no grievance against the petitioner who is the Branch Manager. The learned senior counsel has further pointed out that the statement of accounts and other related books of accounts relating to the transaction between the bank and petrol bunk make it very clear that the entire overdraft facility was availed only by the petrol bunk and having enjoyed the benefits from the bank the petrol bunk owner cannot have any grievance at all against the petitioner who is only the branch manager of the bank. The learned senior counsel also contended that the petrol bunk owner namely second respondent has come forwarded with false and frivolous complaint subjecting the petitioner with unnecessary and unwanted ordeal of facing the proceedings initiated by the petrol bunk owner. The learned senior counsel contended that in view of the above said position allowing the proceedings to continue on the basis of the complaint given by second respondent would amounts to abuse the process of Court and as such the complaint is liable to be quashed. It is also further pointed out by the learned senior counsel that the complaint is pending for investigation for the last more than six months and till date, the petitioner understands that the investigating agency has not collected any material implicating the petitioner herein.

3. Heard the learned Government Advocate (Crl.Side). It is submitted by him that on the basis of the complaint investigation is in progress and the investigating agency is in the process of collecting materials by way of examining the witnesses in this case.

4. Per contra, Mr.V.Balu, learned counsel appearing for the second respondent who is the owner of the petrol bunk, viz., Sri Krishna Service Station contended that second respondent has come forward with definite allegations levelled against the petitioner

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who has been arrayed as A2 as well as against the first accused who was working under him as manager of the petrol bunk. It is pointed out by the learned counsel for second respondent that there are specific allegations of forgery made against both the accused as it is specifically alleged in the complaint that the signature of second respondent was forged by A1 with the connivance of A2.

5. The learned counsel for the second respondent submitted that since there are specific allegations levelled against both the accused, the investigating agency cannot be prevented from collecting materials as per the allegations levelled against both the accused. It is also pointed out by the learned counsel for second respondent that the petitioner who has been arrayed as A2 has not followed the procedure contemplated for according overdraft facility to any person as the second accused has not properly verified the signature and also not even asked for the photograph. It is also further pointed out by the learned counsel for second respondent that the disputed documents were also sent for expert opinion to find out whether the allegation of forgery is made out or not. Therefore, it is contended by the learned counsel for the second respondent that the petitioner has not made out any ground for quashing the First Information Report.

6. I have carefully considered the rival contentions put forward by either side and also perused the complaint copy as well as the petition filed by the petitioner herein.

7. A perusal of the complaint discloses that the second respondent came with a complaint through his Manager in-charge by name Murugan making specific allegation of forgery as it is alleged that the signature of the second respondent was forged while availing the overdraft facility from the bank. It is further alleged that the second accused, viz., the Bank Manager misappropriated an amount of Rs.28,00,000/- and the first accused as the manager of the firm namely, Sri Krishna Service Station, made wrong entries by showing false debit and misappropriated the transacted amount from the bank which runs to Rs.55,00,000/- without the knowledge and authorisation of the company. Therefore, it is crystal clear that there are specific allegations disclosing the alleged offence as mentioned in the complaint. The contention raised by the learned senior counsel for the petitioner relates to only appreciation of facts as the learned Senior counsel placed reliance on the statement of accounts and other accounts relating to Current Account and also loan facility account availed by the said company on four occasions. I am of the considered view that this Court is not vested with such power to appreciate the evidence available through documents in order to find out the truth or falsity of the allegations contained in the complaint at the FIR stage.

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8. The Hon'ble Supreme Court has categorically held in STATE OF ORISSA AND ANOTHER VS. SAROJ KUMAR SAHOO

reported in (2005) 13 SCC 540 held that,

> "8. Exercise of power under Section 482 CrPC in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of Cr.P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under Cr.P.C., (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of "quando lix aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest" (when the law gives a person anything, it gives him that without which it cannot exist). While exersing the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if

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it finds that initiation / continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to access what the report has alleged and whether any offence is made out even if the allegations are accepted in toto."

It is further held by the Hon'ble Supreme Court in the same decision that,

"11. .... The court must be careful to see that its decisions in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material."

9. The Apex Court further held in the very same decision that,

"14. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 Cr.P.C., it is not permissible for the Court to act as if it was a trial court. .... The Court should not act on annexures to the petitions under Section 482 Cr.P.C., which cannot be termed as evidence without being tested and proved."

10. In view of the above well settled principle of law in respect of exercising the power under section 482 Cr.P.C., this Court is of the considered view that the FIR cannot be quashed even before the investigation is completed and in its threshold more particularly when the petitioner is not able to make out a case for quashing the FIR on the basis of the principle laid down by the Apex Court in its decision cited supra.

11. It is relevant to note that the learned Senior counsel placed reliance on certain documents, viz., Current A/c opening forms, Security document form, Statement of Accounts (Current A/c and OD), 1st Loan A/c Statement, 2nd Loan A/c Statement, 3rd Loan

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Statement and 4th Loan A/c Statement which were annexed with the petition for quashing as typed sets of papers. The Hon'ble Supreme Court, as already stated, has held in the decision cited supra that,

> "14. .... The Court should not act on annexures to the petitions under Section 482 Cr.P.C., which cannot be termed as evidence without being tested and proved."

12. In view of the above settled principle of law laid down by the Apex Court this Court cannot look into those documents relied by the learned counsel for the petitioner under Section 482 Cr.P.C., as the same cannot be termed as evidence without being tested and proved the acceptability of those documents is essentially a matter for trial.

13. It is equally well settled that the inherent power is to be exercised sparingly and that too in the rarest of rare cases.

14. Therefore for the aforesaid reasons the quashing petition is dismissed. However, considering the submissions of the learned senior counsel that the investigation is pending for the last more than 6 months, this court is constrained to direct the first respondent police to expedite the investigation as expeditiously as possible particularly within a period of two months. Consequently, connected Miscellaneous petition is also closed.

gg/kk

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Inspector of Police,
Central Crime Branch,
Team-III, Egmore,
Chennai - 600 008.

2.The Public Prosecutor,
Madras High Court,
Madras.

+ one cc to the K.M. Sugadev,Advocate sr no. 4184
+ One cc to Mr. V. Babu, Advocate sr no. 4550

MS(CO)
NM(26.02.07)

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